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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10  
11 In the Matter of the Accusation Against:

Case No. 4471

12 **JAMES SCOTT JOY**  
13 **24218 Ward Street**  
**Torrance, CA 90505**

**A C C U S A T I O N**

14 **Pharmacist License No. RPH 26508**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about November 6, 1969, the Board of Pharmacy issued Pharmacist License  
22 Number RPH 26508 to James Scott Joy (Respondent). The Pharmacist License was in full force  
23 and effect at all times relevant to the charges brought herein and will expire on May 31, 2013,  
24 unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
27 Consumer Affairs, under the authority of the following laws. All section references are to the  
28 Business and Professions Code unless otherwise indicated.

1       4.     Section 4011 of the Code provides that the Board shall administer and enforce both  
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
3 Act [Health & Safety Code, § 11000 et seq.].

4       5.     Section 4300 (a) of the Code provides that every license issued by the Board may be  
5 suspended or revoked.

6       6.     Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,  
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
8 disciplinary action during the period within which the license may be renewed, restored, reissued  
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not  
10 renewed within three years following its expiration may not be renewed, restored, or reinstated  
11 and shall be canceled by operation of law at the end of the three-year period.

12                   **STATUTORY AND REGULATORY PROVISIONS**

13       7.     Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
14 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but  
15 not be limited to, any of the following:

16       ...

17               (f) The commission of any act involving moral turpitude, dishonesty,  
18 fraud, deceit, or corruption, whether the act is committed in the course of relations as  
19 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

20       ...

21               (j) The violation of any of the statutes of this state, of any other state, or  
22 of the United States regulating controlled substances and dangerous drugs.

23       ...

24               (o) Violating or attempting to violate, directly or indirectly, or assisting in  
25 or abetting the violation of or conspiring to violate any provision or term of this  
26 chapter or of the applicable federal and state laws and regulations governing  
27 pharmacy, including regulations established by the board or by any other state or  
28 federal regulatory agency.

26       8.     Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
27 drug or dangerous device except upon the prescription of an authorized prescriber.

28       //

1       9.     Section 4081 of the Code states:

2               (a) All records of manufacture and of sale, acquisition, or disposition of  
3 dangerous drugs or dangerous devices shall be at all times during business hours open  
4 to inspection by authorized officers of the law, and shall be preserved for at least  
5 three years from the date of making. A current inventory shall be kept by every  
6 manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician,  
7 dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or  
8 establishment holding a currently valid and unrevoked certificate, license, permit,  
9 registration, or exemption under Division 2 (commencing with Section 1200) of the  
10 Health and Safety Code or under Part 4 (commencing with Section 16000) of  
11 Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous  
12 drugs or dangerous devices.

13              (b) The owner, officer, and partner of a pharmacy, wholesaler or . . . shall  
14 be jointly responsible, with the pharmacist-in-charge or designated representative-in-  
15 charge, for maintaining the records and inventory described in this section.

16       10.     Section 4113 states, in pertinent part, as follows: "(c) The pharmacist-in-charge shall  
17 be responsible for a pharmacy's compliance with all state and federal laws and regulations  
18 pertaining to the practice of pharmacy."

19       11.     Health and Safety Code section 11150 provides, in pertinent part, that no person other  
20 than an authorized prescriber shall write or issue a prescription.

21       12.     California Code of Regulations, title 16, section 1714, subdivision (d) provides that:

22               Each pharmacist while on duty shall be responsible for the security of the  
23 prescription department, including provisions for effective control against theft or  
24 diversion of dangerous drugs and devices, and records for such drugs and devices.  
25 Possession of a key to the pharmacy where dangerous drugs and controlled  
26 substances are stored shall be restricted to a pharmacist.

27       13.     California Code of Regulations, title 16, section 1718, provides that:

28               'Current Inventory' as used in Sections 4081 and 4332 of the Business  
and Professions Code shall be considered to include complete accountability for all  
dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section  
1304 shall be available for inspection upon request for at least 3 years after the date of  
the inventory.

#### **COST RECOVERY**

14.     Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
administrative law judge to direct a licentiate found to have committed a violation of the licensing  
act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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1 **DANGEROUS DRUGS**

2 15. Section 4022 of the Code states, in pertinent part:

3 'Dangerous drug' or 'dangerous device' means any drug or device unsafe  
4 for self use in humans or animals, and includes the following:

5 (a) Any drug that bears the legend: 'Caution: federal law prohibits  
6 dispensing without prescription,' 'Rx only,' or words of similar import.

6 . . . . .

7 (c) Any other drug or device that by federal or state law can be lawfully  
8 dispensed only on prescription or furnished pursuant to Section 4006.

9 16. "Glucotrol", the brand name for "Glipizide" is used to help control blood sugar in  
10 patients with type 2 diabetes and it helps a person's pancreas to create insulin. It is categorized as  
11 a dangerous drug pursuant to Section 4022.

12 17. "Lipitor", a brand name for "atorvastatin", is an oral drug that lowers the level of  
13 cholesterol in the blood. It is categorized as a dangerous drug pursuant to Section 4022.

14 18. "Metformin" (originally sold as "Glucophage") is used to treat diabetes and is a  
15 dangerous drug pursuant to Section 4022 of the Code.

16 **FACTUAL BACKGROUND**

17 19. From on or about April 15, 2004 until August 1, 2011, Respondent worked as the  
18 pharmacist-in-charge (PIC) for Coast Plaza Hospital Pharmacy (Coast) (License No. HSP 36833,  
19 cancelled on December 2011 due to change of ownership), located at 13100 Studebaker Road,  
20 Norwalk, California. As a PIC, Respondent had access to controlled substances and dangerous  
21 drugs.

22 20. During this employment, Respondent took advantage of this access to steal and/or  
23 divert dangerous drugs, including Lipitor, Glipizide XL, Metformin, Etodolac and/or Allopurinol  
24 drug products, for his own use. The exact number of instances of diversion by Respondent, and  
25 the full quantity of dangerous drugs diverted and/or stolen by Respondent, are not known, but in  
26 the course of investigations conducted by Coast and by Board Inspector(s), the following were  
27 among the observations, admissions, and revelations reported:

28 //

1           a.     On or about June 7, 2011, the Board received a notice from Coast's CEO, G.G.,  
2     that he had met with Respondent in person, and believed that Respondent had diverted Lipitor,  
3     Glipizide XL and Metformin.

4           b.     On or about June 28, 2010, G.G. further informed the Board that a pharmacy  
5     technician and pharmacist at Coast had notified Coast's Human Resources Director, M.K., about  
6     a possible diversion of medications by Respondent. On or about May 12, 2011, G.G., K.K. and  
7     the Chief Administrative Officer for Coast, L.R., met with Respondent, and G.G. met with  
8     Respondent alone at the end of the meeting. Respondent admitted to G.G. that he had been  
9     diverting medications from Coast. On or about May 19, 2011, the Director of Quality and Risk  
10    Management for Coast, S.T., also met with Respondent, who admitted to her that, beginning in  
11    April, Respondent ordered diabetic medicine for himself. He understood that it was wrong to  
12    order his own medication, but he told S.T. that this is the first time this has happened, and he had  
13    paid for the medication. Respondent also informed S.T. that "[T]his is very embarrassing and it  
14    will never happen again." He was asked if this was the only time he had ever taken medication,  
15    and he responded "yes". Between May 12, 2011 and May 19, 2011, L.R. met with Respondent,  
16    who explained to her that he had recently purchased supplies out of his own pocket, so when he  
17    had ordered the medication, it was offset by that.

18          c.     On or about September 27, 2011, the Board's inspector conducted an inspection  
19    and investigation of the case involving Coast and Respondent, during which she conducted  
20    interviews of personnel of Coast regarding Respondent's alleged diversion of medications from  
21    Coast. At the time of the incident, Coast had been purchased by Avanti Health Systems. K.L.  
22    assumed the position of PIC for Coast, and Respondent left his position a few days later, on or  
23    about August 1, 2011. K.L. advised the Board's inspector that there was no prescription profile  
24    on file with Coast for Respondent. Also, Coast's policy did not allow the pharmacy to provide  
25    any medications to ambulatory patients, and Lipitor was not on the hospital's formulary. Coast  
26    almost always purchased its drugs as unit-dose, not single containers, unless it was ordered for a  
27    physician, in which case an order was generated with a purchase order number containing letters  
28    "MD" as the suffix. The doctors paid for the medication at the main office, brought the receipt to

1 Coast pharmacy, and picked up the medication. L.R. stated that they were not aware of a doctor's  
2 order and payment for the questionable drugs.

3 d. On April 29, 2011, bottles of Lipitor, Glipizide XL and a 500 tab bottle of  
4 Metformin came into the pharmacy from Coast's wholesaler, AmerisourceBergen. Upon receipt  
5 of these drugs, a pharmacy technician employed by Coast, who was on duty that day, placed the  
6 drugs on the shelf by the window according to protocol. Normally the drugs are matched with the  
7 slip with the doctor's name and the price of the medication, but in this case, there was/were no  
8 such slip(s) for the medications, and they did not know who had ordered them. The pharmacy  
9 technician was suspicious that they had not been ordered by a doctor, but for self-use by  
10 Respondent, because this was not the first time this had occurred. The pharmacy technician  
11 witnessed Respondent approach the shelf where the Lipitor, Glipizide and Metformin were  
12 placed, saw him grab the medications, mutter "doctors, doctors, doctors", and take them into his  
13 office. No one at Coast pharmacy witnessed any doctors come by for those medications, nor did  
14 anyone see whether these medications were paid for by Respondent or by any one else. A similar  
15 incident occurred around December, 2009, when another shipment of medications came to Coast  
16 containing Lipitor, and the invoice containing these drugs also had a purchase number with the  
17 initials "MD". The pharmacy technician suspected the medications were for Respondent, and hid  
18 them in the bottom tote of a stack of totes to see if Respondent would search for them.  
19 Respondent dug through the totes, found the medications in the bottom tote, and took them to his  
20 office.

21 e. There were seven invoices from Amerisource Bergen to Coast totaling almost  
22 \$4,000 in medications, whenever Lipitor was ordered, dated 04/14/09, 05/16/09, 07/01/09, -  
23 6/28/10, 10/08/10, 01/18/11 and 04/29/11. The amount ordered and time ordered coincides with  
24 how one normally takes these medications as scheduled.

25 f. On or about November 2, 2011, the Board's Inspector met with Respondent,  
26 who was reluctant to answer his questions. He stated the hospital owed him money for a few  
27 reference books he had bought with his credit card for the 2011 survey preparation, and for a few  
28 trays for preparing sterile solutions. To even out the cost, he had ordered Lipitor, Metformin and

1 Glipizide XL for himself. The Board's Inspector asked Respondent for a copy of the receipts,  
2 and he said he did not have any. The Board's Inspector indicated he could obtain a copy of the  
3 transactions through his credit card company, but Respondent stated "let's forget it", and that it  
4 was not "smart" to purchase supplies for the hospital with his credit card. Respondent also  
5 confirmed that neither Lipitor nor Etodolac were on Coast's formulary drug list.

6 g. Respondent refused to write a statement or provide an authorization to access  
7 his medical information. Respondent kept saying it was a "mistake", he did not want to talk  
8 about it, and he was embarrassed by it. Respondent subsequently relented and did execute a brief  
9 declaration under penalty of perjury for the Board's Inspector, which states that: "All details have  
10 been discussed with [the Board's Inspector] and nothing needs to be added here. I am very sorry  
11 and completely embarrassed [sic] by my actions."

12 h. The Board's Inspector ordered copies of the purchasing orders for Lipitor,  
13 Glucotrol XL and Metformin, from 01/01/09 to 05/10/11. Based upon the number of days and  
14 quantities of each medication, the data is indicative of someone taking Metformin three times per  
15 day, Glipizide twice per day and Lipitor once per day. Respondent admitted to G.G. and other  
16 staff of Coast, as well as the Board's Inspector, that he had purchased Glipizide XL, Metformin,  
17 and Lipitor on 04/29/11, under Purchase Order No. 42811MD, for himself.

#### 18 **FIRST CAUSE FOR DISCIPLINE**

##### 19 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)**

20 21. Respondent is subject to discipline under Section 4301(f) of the Code in that  
21 Respondent, as described in Paragraphs 19 through 20 above, committed numerous acts involving  
22 moral turpitude, dishonesty, fraud, deceit, or corruption.

#### 23 **SECOND CAUSE FOR DISCIPLINE**

##### 24 **(Furnishing of Dangerous Drugs Without A Valid Prescription(s))**

25 22. Respondent is subject to discipline under Section 4301(f) and/or (o) and/or Section  
26 4059(a) of the Code, in that Respondent, as described in Paragraphs 19 through 20 above,  
27 furnished to himself or another without a valid prescription/prescriptions, and/or conspired to  
28 furnish, and/or assisted or abetted the furnishing of, dangerous drugs.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Operational Standards and Security)**

3 27. Respondent is subject to discipline under Section 4301(j) and/or (o), and/or Section  
4 4113(b) of the Code, and/or California Code of Regulations, title 16, Section 1714 (d), in that on  
5 or about between 04/07/09 through 04/29/11, Coast and Respondent could not account for all  
6 dangerous drugs, as set forth in Paragraphs 19 through 20 and 25 through 26 above, which are  
7 incorporated as though set forth fully herein.

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct)**


10 28. Respondent is subject to discipline under Section 4301 of the Code in that  
11 Respondent engaged in unprofessional conduct, as described in Paragraphs 19 through 27 above,  
12 which are incorporated as though set forth fully herein.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
15 and that following the hearing, the Board of Pharmacy issue a decision:

- 16 1. Revoking or suspending Pharmacist License Number RPH 26508, issued to James  
17 Scott Joy;  
18 2. Ordering James Scott Joy to pay the Board of Pharmacy the reasonable costs of the  
19 investigation and enforcement of this case, pursuant to Business and Professions Code section  
20 125.3; and  
21 3. Taking such other and further action as deemed necessary and proper.

22  
23 DATED: 5/9/13

24   
25 VIRGINIA HEROLD  
26 Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
Complainant

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